



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/153658

PRELIMINARY RECITALS

Pursuant to a petition filed November 21, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on February 13, 2014, at Kenosha, Wisconsin.

The issue for determination is whether the Department of Health Services, Division of Health Care Access and Accountability (DHS) correctly denied Petitioner's request for speech/language therapy.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: OIG by letter

Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.

2. On August 19, 2013, the Petitioner received a prescription for supplemental supportive services outside of school. (Exhibit 2, pg. 10)
3. On August 28, 2013, Tender Touch Therapy, LLC (Tender Touch) completed a speech/language evaluation of the Petitioner. (Exhibit 5, pg. 11-15)
4. On September 5, 2013, Tender Touch filed, on behalf of the Petitioner, a request for prior authorization of a Speech/Hearing Evaluation (one hour) and Speech/Hearing Therapy, 48 sessions over 26 weeks, at a cost of \$5,970.00. The requested authorization start date was August 28, 2013. (Exhibit 5, pg. 4)
5. On October 28, 2013, the Department of Health Services sent the Petitioner a notice indicating that the requested services were denied. On the same date, the Department of Health Services sent Tender Touch, notice of the same denial. (Exhibit 2, pgs. 73-78)
6. The Petitioner is a three year old child with diagnoses of Autism and a related mixed language disorder. (Exhibit 5, pgs. 4 and 11; Exhibit 2)
7. The stated Long Term Goals in the Evaluation and Plan of Care attached to the Prior Authorization Requests were:
 1. Will increase receptive language skills in the areas of object identification and following directives to 70% accuracy.
 2. Will increase expressive language skills to express wants and needs 70% of the time.
 3. Will increase pragmatic language skills to demonstrate turn-taking and waiting 70% of the time.

(Exhibit 5, pg. 14)

8. The stated short term goals in the same Evaluation and Plan of Care were:
 1. Will point to object or pictures named from a field of 2 with moderate prompting with 70% accuracy.
 2. Will follow simple 1-step directives with moderate prompting and cueing with 70% accuracy.
 3. Will request help, continuation, or cessation, either verbally or with signs, during structured activities in 3 out of 5 opportunities with a model and moderate prompting/cueing.
 4. Will participate in 3 cycles or turn-taking activities. David will wait a minimum of 30 seconds between turns without abandoning activity or demonstrating anger, given moderate prompts and cueing.
 5. During turn-taking activities, will wait a minimum of 30 seconds between turns without abandoning activity or demonstrating anger, given moderate prompts and cueing.
 6. Monitor speech sounds for developmental appropriateness.

(Id.)

9. The Petitioner receives speech language services through the Kenosha Unified School District. He receives 40 minutes per week of Speech-Language Therapy and 184 minutes per week (in 4 sessions) of large and small group instruction in the areas of school readiness skills, communication and social functioning. (Exhibit 5, pg. 63)
10. His most recent IEP, dated July 3, 2013, states the following goals:

1. Will increase his receptive and expressive vocabulary up to 50-75 true words/approximations, pictures, gestures and/or "voca".
2. Will increase his ability to use 1-3 word utterances utilizing words, pictures, and/or "voca" for a variety of language functions (i.e. greeting, protesting, commenting, requesting, etc.) in 3/5 structured opportunities.
3. Will increase his ability to respond to yes/no, "what" and choice questions in 3/5 structured opportunities.
4. Will maintain joint attention with an adult for four to six reciprocal turns in 3 of 4 opportunities.
5. Will initiate and sustain interactions with one to two peers (offering and sharing toys and materials, taking turns and making requests) for 5-7 minutes in 3 of 5 opportunities.

(Exhibit 5, pgs. 56-62)

11. Petitioner also receives services from the Wisconsin Early Autism Project. (Exhibit 2, pgs. 6-9; Exhibit 5, pg. 11)

DISCUSSION

The Department of Health Services sometimes requires prior authorization to:

1. Safeguard against unnecessary or inappropriate care and services;
2. Safeguard against excess payments;
3. Assess the quality and timeliness of services;
4. Determine if less expensive alternative care, services or supplies are usable;
5. Promote the most effective and appropriate use of available services and facilities; and
6. Curtail misutilization practices of providers and recipients.

Wis. Admin. Code § DHS107.02(3)(b)

Speech and language therapy is a Medicaid covered service, subject to prior authorization after the first 35 treatment days. Wis. Admin. Code, § DHS107.18(2).

"In determining whether to approve or disapprove a request for prior authorization, the department shall consider:

1. The medical necessity of the service;
2. The appropriateness of the service;
3. The cost of the service;
4. The frequency of furnishing the service;
5. The quality and timeliness of the service;
6. The extent to which less expensive alternative services are available;
7. The effective and appropriate use of available services;
8. The misutilization practices of providers and recipients;
9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including Medicare, or private insurance guidelines;
10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
12. The professional acceptability of unproven or experimental care, as determined by consultants to the department."

Wis. Admin. Code § DHS107.02(3)(e)

“Medically necessary” means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
 2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
 3. Is appropriate with regard to generally accepted standards of medical practice;
 4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
 5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
 6. **Is not duplicative with respect to other services being provided to the recipient;**
 7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
 8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
 9. **Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.**

Emphasis added, Wis. Adm. Code. §DHS 101.03(96m)

Petitioner has the burden to prove, by a preponderance of the credible evidence that the requested level of therapy meets the approval criteria.

It is the position of DHS that the Petitioner’s request for services does not meet approval criteria because there has been insufficient coordination of care with Petitioner’s school-based speech pathologist. The DHS also denied the prior authorization request, because the goals of the requested service are not covered by Medicaid.

COORDINATION OF CARE

The Office of Inspector General (OIG) indicated that DHS denied the Petitioner's prior authorization request, in part, because his provider did not coordinate care with the Petitioner’s speech language pathologist (SLP) at school.

The on-line provider handbook located at <https://www.forwardhealth.wi.gov/WIPortal> contains guidelines for obtaining prior authorization of services. Guidelines for speech language therapy are found under the category Therapies: Physical, Occupational & Speech Language Pathology.

Topics 2781 and 2784 are found under the subheadings of Provider Enrollment & On-going Responsibilities/Communication/Requirements.

Topic 2781 states:

BadgerCare Plus PT, OT, and SLP providers are required to communicate with other providers as frequently as necessary to do the following:

- Avoid duplication of services.

- Ensure service coordination.
- Facilitate continuity of care.

Topic #2784 states that physical therapy, occupational therapy and speech language pathology providers, along with school-based service providers, are required to communicate with each other at least once a year. School based providers are required to cooperate with physical therapy, occupational therapy and speech language pathology providers who request copies of the child's IEP or components of the IEP team evaluation. *Online Provider Handbook, Topic # 2784*

At the time of the prior authorization, Petitioner's private speech-language pathologist (SLP), Ms. Foshager, had the Petitioner's IEP. However, she did not speak to or have written communication with Petitioner's school SLP before submitting the prior authorization request. (Testimony of [REDACTED] Foshager)

Because there had been no actual direct communication with the school SLP, Tender Touch has not satisfied the co-ordination of care requirements for the prior authorization request to be approved. In the absence of such communication, Tender Touch cannot reasonably conclude that the services for which it seeks approval are an appropriate level of care or are not duplicative in light of all other services Petitioner receives at school.

It should be noted that Ms. Foshager did make contact with the school SLP on January 15, 2014 and January 17, 2014. The school SLP opined that the Petitioner needed additional SLP services outside of school. However, after speaking with the school SLP, Ms. Foshager determined that the goals stated in the September 2014 prior authorization request are no longer appropriate and that a new baseline must be determined. (Testimony of Ms. Foshager)

It should also be noted that there is no indication in the record that the private SLP from Tender Touch coordinated care with the Early Autism Project.

Based upon the foregoing, it is found that DHS correctly determined that Tender Touch did not adequately coordinate care with Petitioner's other treatment providers.

DUPLICATION OF SERVICES

The OIG also rejected the prior authorization request because it deemed the school services to be sufficient; as such the services requested by Tender Touch would be duplicative.

Deputy Secretary Susan Reinardy held in *DHA Final Decision No. MPA-37/80183*, a speech therapy appeal, that "the deciding factor in whether services are duplicative is not the [therapy] technique utilized by the therapists, but the goals and outcomes being addressed by the therapists." *Id.* at 2. It does not matter, for example, if one provider addresses group activities with peers and the other one-on-one activities with an adult. A requested service duplicates "an existing service if the intended outcome of the two services is substantially the same." *Id.* at 3. Her decision specifically rejected additional therapy because the recipient "'needs' more intense services than the school provides." The holding rests on the principle that "Medicaid may not pay for two services if both services have the same intended outcome or result with respect to the medical condition the services are intended to address." *Id.* at 4. Because this decision was written by the deputy secretary, I must follow it.

Reviewing the goals in the Plan of Care submitted by Tender Touch and reviewing the goals of Petitioner's IEP, there is, in fact, some duplication of services/goals. Both work with Petitioner on taking turns with adults and peers, appropriate interaction and expressing wants and needs using pictures, vocalization and signing. (See Findings of Fact #8 and #10 above)

It should be noted that when Petitioner's SLP with Tender Touch was finally able to touch base with the school SLP in January 2014, it was determined that the goals of therapy stated in the prior authorization request were not appropriate and that new base lines needed to be determined for private therapy. From this, one could infer that the goals of school-based therapy were substantially similar to the goals of private therapy that were stated in the September 2013 prior authorization request.

Based upon all of the foregoing, it is found that the Department of Health Services correctly denied Petitioner's request for on-going private speech language services.

COVERAGE FOR THE INITIAL EVALUATION

The OIG denied coverage of Tender Touch's evaluation, asserting that it was duplicative of the IEP established by the Kenosha Unified School District on July 3, 2013 and of the evaluation done by the Wisconsin Early Autism Project (WEAP) on May 3, 2013. (See Exhibit 2, pgs. 6-10 and Exhibit 5, pg. 39)

The WEAP evaluation appears to be an evaluation to determine whether Petitioner fits the diagnostic criteria for Autism Spectrum Disorder. It is not a speech/language evaluation.

The IEP is a broad evaluation of Petitioner's educational needs. It is not, itself, a speech/language evaluation. As such, neither the WEAP evaluation, nor the IEP is duplicative of the evaluation performed by Tender Touch.

The Petitioner had a prescription for "additional supportive therapy" to supplement the services he was receiving through Kenosha Unified School District. (Exhibit 2, pg. 10) As such, it was medically necessary for Tender Touch to complete an evaluation of the Petitioner on August 28, 2013, before determining what supplemental services, if any were needed. Accordingly, reimbursement for the Speech Hearing Evaluation will be approved.

I note to the Petitioner that his provider, Tender Touch Therapy, LLC will not receive a copy of this Decision. In order to have the cost of the August 28, 2013 evaluation approved, the Petitioner must provide a copy of this Decision to Tender Touch Therapy, LLC. The provider must then submit a *new* prior authorization request to receive the approved coverage.

CONCLUSIONS OF LAW

1. DHS correctly denied Petitioner's request for prior authorization for 48 sessions of speech/language services.
2. DHS did not correctly deny coverage of the speech/hearing evaluation.

THEREFORE, it is

ORDERED

That Tender Touch Therapy may be reimbursed for the cost of the August 28, 2013 evaluation. In all other respects, the petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative

Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

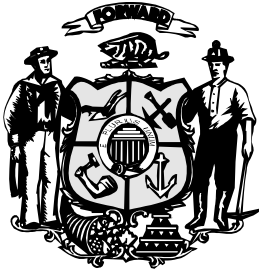
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 26th day of March, 2014.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on March 26, 2014.

Division of Health Care Access and Accountability